RAMANATHAN A/L CHELLIAH

v.

PUBLIC PROSECUTOR

HIGH COURT MALAYA, KUALA LUMPUR
DATO' SYED AHMAD IDID J
[CASE NO: 44-55-94]
23 DECEMBER 1994

CRIMINAL PROCEDURE: *Accused handcuffed while in the dock - Whether unlawful - Whether a matter of discretion of the Court - Whether Court exercised discretion judiciously - Whether High Court to exercise its revisionary power - Criminal Procedure Code s. 323.*

This was an application for a revision of the ruling made by the Sessions Judge to the effect that it was lawful for the applicant to be handcuffed while being in the dock while facing a charge of using criminal force with intent to outrage modesty under s. 354 Penal Code. The applicant argued that to handcuff him while in Court was unlawful as it ran against the very grain of the presumption of his innocence. The facts showed that the Deputy Public Prosecutor had explained to the Sessions Judge as to why it was necessary to keep the applicant in handcuffs, and it was only upon considering the grounds offered as well as the arguments in counter of the applicant's Counsel, that the Sessions Judge made her said order.

Before the learned Judge the issue that arose was whether ordering an accused to be handcuffed while in Court is a matter of discretion of the Court, and if so, whether the Sessions Judge herein, in the circumstances, had exercised her discretion judiciously when making the order in question.

Held:

[1] The decision whether one is guilty or not is dependent on the evidence. Therefore the trial of the accused can in no way be prejudiced by the order to handcuff him. His situation of being handcuffed in the dock cannot determine the outcome of the trial.

[2] The Court has a discretion, to be exercised judiciously, whether to order the accused to be handcuffed when he goes into the dock. In the present case, the order to handcuff was made on the grounds as put forth by the learned Deputy Public Prosecutor and clearly, sufficient grounds had been examined by the learned Sessions Judge before she came to her decision. Based on the materials available it could only be concluded that the decision was arrived at after a judicious exercise of discretion. The proceeding was thus regular and its correctness, legality or propriety could not be called into question. The facts and the principles therefore leave this Court with no room to exercise its revisionary power.

[Application dismissed].

Cases referred to:

Sunil Gupta & Ors. v. State of Madhya Pradesh & Ors. at p. 450 ***(refd)***
Yaakub bin Ahmad v. Public Prosecutor [1975]2 MLJ 223 ***(refd)***
Public Prosecutor v. Wee Swee Siang [1948]14 MLJ 114 at p. 115 ***(refd)***
Prem Shankar Shukla v. Delhi Administration AIR 1980 SC 1535 ***(refd)***
Re-Tan Boon Liat @ Allen & Anor. et. al. [1977]2 MLJ 108

Legislation referred to:

Criminal Procedure Code, s. 117, 323(1)
Evidence Act, s. 54
Penal Code, s. 354
Police Act (Act 344), s. 20(3)(m)

For the applicant - Karpal Singh; M/s. Karpal Singh & Co.
For the respondent - Stanley Augustin, DPP

JUDGMENT

Syed Ahmad Idid J:

The applicant urged the Court to revise the learned Sessions Court Judge's decision made on 4 October 1994 when it was held lawful for the applicant to be handcuffed while he was in the dock in that Court.

Applicant faces two charges
On that date, the applicant faced two charges that he between 9 p.m. and 10 p.m. between 23 and 27 October 1992 at room 1015 at Bangunan Persatuan Bola Keranjang Malaysia, had used criminal force on:

(a) Rasidah bte Othman and

(b) Manimagaly a/p Nadaraja

with intent to outrage their modesty. Such offences are described in and punishable under s. 354 of the Penal Code.

The applicant was arrested at his house at 6.30 p.m. on 3 October 1994 and was remanded in police custody until produced in Court at 11 a.m. the next day.

In the Sessions Court, the applicant's Counsel Mr. Karpal Singh applied to the learned Sessions Court Judge to have the handcuff on the applicant removed but the DPP Mr. Stanley Augustin opposed the application.

According to the applicant,

> The learned Sessions Judge refused my Counsel's application despite there being no grounds whatsoever for my having been handcuffed in the dock. I am advised by my solicitors and verily believe the learned Sessions Judge has set a very dangerous precedent in having declined to ensure I was not handcuffed while in the dock in Court. I respectfully state the prosecution did not produce a scrap of evidence to indicate there was basis for my being required to be handcuffed in the dock. I am advised by my solicitors and verily believe my having been handcuffed in the dock runs against the grain of the presumption of innocence."

Two issues
What was in fact one application in respect of the handcuffing of the applicant then became two limbs when Mr. Karpal Singh approached the matter from the angle that future cases of similar nature be also taken into account. Mr. Karpal Singh urged the Court to consider two issues:

(i) position of the suspects held by police under s. 117 with the view of their production in Court and

(ii) once the person (suspect or accused) is in Court, to what extent is the Court's discretion to direct that the accused be handcuffed in the dock.

On the basis of the application and the matters brought before the Court, I shall not deal with the first issue. I agree initially that an accused does not lose his fundamental rights but this has to be tampered with the decision of the Court arrived at after considering all the circumstances of each case.

I shall now go into the authorities such as:

(a) In 1990, the Indian Supreme Court case (Cri) 440 *Sunil Gupta & Ors. v. State of Madhya Pradesh & Ors.* at p. 450 observed that:

> Chinnappa Reddy J in *Bhim Singh MLA v. State of J & K* has expressed his view that police officers should have the greatest regard for personal liberty of citizens in the following words: (SCC p. 685, para 2)
>
> Police officers who are the custodians of law and order should have the greatest respect for the personal liberty of citizens and should not flout the laws by stooping to such bizarre acts of lawlessness. Custodians of law and order should not become depredators of civil liberties. Their duty is to protect and not to abduct.

(b) In *Yaakub bin Ahmad v. Public Prosecutor* [1975]2 MLJ 223:

> The appellant had been convicted on a charge of armed robbery. On appeal it was argued (1) that a fair trial of the appellant was prejudiced by reason of the fact that he was kept handcuffed throughout the trial; (2) ....

There it was held:

> dismissing the appeal: (1) in the circumstances of this case there was nothing wrong in the Judge granting the application that the appellant be handcuffed during the trial and the trial of the appellant was in no way prejudiced.

(c) Quite some years ago, in the case of *Public Prosecutor v. Wee Swee Siang* [1948] 14 MLJ 114 at p. 115 Callow J said:

> I should mention, before concluding, the complaint by Mr. Salt that the accused was brought to the Court below in manacles. An accused person is innocent until he is proved guilty, and restraint is not usually required unless the accused is violent or has committed a crime of violence or that he may attempt to escape. As to whether violence or escape was anticipated in this case I do not know. I hope those responsible for the custody of accused persons will bear these observations in mind, and refrain from the use of handcuffs on unconvicted persons unless essential.

Facts

The facts in today's application can be confined to (a) the applicant's appearance in the Sessions Court in handcuffs (b) the oral application to take off the handcuffs and the Deputy Public Prosecutor's objections which led to the order that the applicant continue to be handcuffed and (c) in all, the applicant was handcuffed for about 20 minutes.

As a matter of fact I must differentiate between a handcuff and (a) "manacles". For this I shall quote:

> We realise that to manacle man is more than to mortify him; it is to dehumanize him and, therefore, to violate his very personhood, too often using the mask of `dangerousness' and security.

or (b) "irons". The Indian authorities mention that "Absent fair procedure and objective monitoring, to inflict `irons' is to resort to zoological strategies". The "hoops of steel" are also not handcuffs. Hence when we read the authorities on this subject we must be extra cautious to confine ourselves to the ordinary handcuffs which our Police personnel use as allowed by the law.

Contentions

Mr. Karpal Singh cited the passage in *Sunil Gupta & Ors.* [1990] SCC (Cri) 440 at p. 449 where it was pointed out:

> Handcuffing is *prima facie* inhuman and, therefore, unreasonable, is over-harsh and at the first flush, arbitrary.

Thus, we must critically examine the justification offered by the State for this mode of restraint. Surely, the competing claims of securing the prisoner from fleeing and protecting his personality from barbarity have to be harmonised.

Can the Courts order an accused be handcuffed?

It was said in *Prem Shankar Shukla v. Delhi Administration* AIR 1980 SC 1535 that "the nature of the accusation is not the criterion" (to handcuff or not). The clear and present danger of escape breaking out of the Police control is the determinant.

Encik Stanley Augustin said that the application was vexatious, frivolous and an abuse of the due process of the law. He specified para. 8 of the affidavit in reply which stated that "when the applicant appears in Court tomorrow (i.e., 1 December 1994 for the trial on the charges) he will not be handcuffed." So on that Mr. Augustin described the application as hypothetical and imaginary and not based on the merits.

Section 20(3)(m) of the Police Act (Act 344) places the duty on the Police of escorting and guarding prisoners and other persons in custody. It is the duty of the Police officer to take such lawful measures and do lawful acts as may be necessary. And in accordance with this, R.S. Pathak J in *Prem Shankar Shukla v. Delhi Administration* AIR 1980 SC 1535 said

> whether handcuffs or other restraint should be imposed on a prisoner is a matter for the decision of the authority responsible for his custody.

In the Subordinate Court, the learned Deputy Public Prosecutor explained the reasons why such action i.e. to keep the accused (or applicant today) in handcuffs was necessary. It was desirable for the custodial authority to have informed the Court of the circumstances and the justification for imposing a restraint. It seems to me this was done and additionally the learned Sessions Court Judge considered them and made a decision.

The normal procedure, it seems to me, is that handcuffs are removed when a person is in the accused's dock. Even Callow J in *Public Prosecutor v. Wee Swee Siang* concluded that the use of handcuffs may be ordered where it is "essential" to do so. The circular on "The handcuffing of prisoners in the dock during trials and hearing of appeals" issued by the Chief Justice Malaya on 24 February 1987 is clear as to the intent and mode. Mr. Karpal Singh has no quarrel with that. I am of the opinion that the spirit of the circular and its guidance are to be adhered to in all future cases in the Sessions and Magistrates' Courts.

The main brunt of the attack seems to be on "discretion". In all cases discretion must be exercised judiciously. And so we come to the question whether at the time the Sessions Court decided that the applicant be handcuffed, the accused was of a nature that he posed a threat or was violent or in any form of conduct which could lead to his escape or running away or posed a situation which led the Court to make the decision to continue handcuffing him. I am in agreement with the decision in *Sunil Gupta's* case where it was said that:

> To prevent the escape of an accused undertrial is in public interest, reasonable, just and cannot, by itself, be castigated.

One may incline to the view that a handcuffed man in the dock would not appear to be innocent but in practice whether one is handcuffed or not whilst in the dock, the decision whether one is guilty or not is dependent on the evidence. Even his bad character is not relevant (s. 54 Evidence Act) see *Lim Kong v. Public Prosecutor* [1962] MLJ 195 and the several cases cited therein. So I am of the view that the trial of the accused can in no way be prejudiced and his situation of being handcuffed in the dock does not determine the outcome of the trial, See *Yaakub bin Ahmad v. Public Prosecutor* [1975]2 MLJ 223. Also *Re-Tan Boon Liat @ Allen & Anor.* et. al. [1977]2 MLJ 108.

Whether anyone holds the opinion that the accused should not have been handcuffed when he was in the dock or that the prosecution should not have insisted on his being handcuffed as the prosecution was going to offer bail, the crux is that at the time when the learned Sessions Court Judge decided on the order to handcuff the applicant, this was done on the grounds as put forth by the learned Deputy Public Prosecutor. The Deputy Public Prosecutor had applied for the handcuffs to be put on the applicant, and the escorting authority then recorded contemporaneously the reasons for doing so. Based on the materials made available to me, I conclude the Sessions Court decision was arrived at after a judicious exercise of her discretion.

I shall not dismiss the application on the grounds of it being trivial as such a matter of handcuffing a human being is not trivial. See, for example, AIR 1980 SC 1535, where it was held that:

> Handcuffs are not summary punishment vicariously imposed at police level, at once obnoxious and irreversible.
>
> And, once the Court directs that handcuffs shall be off, no escorting authority can overrule judicial direction.
>
> It will be unreasonable so to do unless the State is able to make out that no other practical way of forbidding escape is available, the prisoner being so dangerous and desperate and the circumstances so hostile to safe-keeping.

But I am of the opinion that there were sufficient grounds which the learned Sessions Court Judge had examined. There was clear material, not glib assumption, and a record of reasons. Consideration was given to the defence Counsel's arguments by the Court where the applicant appeared. The Judge then came to exercise her discretion on the grounds put forth by the prosecution to which she was attracted. I cannot see the applicant in the sad situation as described in *Sunil Gupta's* case, and I quote:

> But to bind a man hand-and-foot, fetter his limbs with hoops of steel, shuffle him along in the streets and stand him for hours in the Courts is to torture him, defile his dignity, vulgarise society and foul the soul of our constitutional culture. Where then do we draw the humane line and how far do the rules err in print and praxis?

The facts and the principles leave me no room to revise. The learned Sessions Court Judge's order does not appear to be against the" ... correctness, legality or propriety". Additionally the proceedings at her Court was regular. (Section 323(1) Criminal Procedure Code). On that and the preceeding principles of law, I now dismiss the application. Perhaps it is timely to remind all Sessions Court Judges and Magistrates to constantly be cautious when they come across similar situations in future.